

Legislative Brief

The Judicial Standards and Accountability Bill, 2010

The Judicial Standards and Accountability Bill, 2010 was introduced in the Lok Sabha on December 1, 2010. The Bill was introduced by the Minister of Law and Justice. The Bill was referred to the Standing Committee on Personnel, Public Grievances, Law and Justice (Chairperson Smt. Jayanti Natarajan), which is scheduled to submit its report by April 30, 2011.

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Highlights of the Bill

- ◆ The Judicial Standards and Accountability Bill, 2010 requires judges to declare their assets, lays down judicial standards, and establishes processes for removal of judges of the Supreme Court and High Courts.
- ◆ Judges will be required to declare their assets and liabilities, and also that of their spouse and children.
- ◆ The Bill establishes the National Judicial Oversight Committee, the Complaints Scrutiny Panel and an investigation committee. Any person can make a complaint against a judge to the Oversight Committee on grounds of 'misbehaviour'.
- ◆ A motion for removal of a judge on grounds of misbehaviour can also be moved in Parliament. Such a motion will be referred for further inquiry to the Oversight Committee.
- ◆ Complaints and inquiries against judges will be confidential and frivolous complaints will be penalised.
- ◆ The Oversight Committee may issue advisories or warnings to judges, and also recommend their removal to the President.

Key Issues and Analysis

- ◆ The key issue is whether the balance between independence and accountability is maintained by the proposed mechanism in the Bill. The Oversight Committee has non-judicial members which might impinge on the independence of the judiciary.
- ◆ The Bill penalises anyone who breaches the confidentiality of complaints. It is questionable whether a penalty is needed for a frivolous complaint that remains confidential.
- ◆ The Scrutiny Panel has judges from the same High Court. This is different from the in-house procedure of the Supreme Court.
- ◆ The Oversight Committee has non-judicial members. The procedure of the Committee is not an in-house procedure of the judiciary. It is not clear whether the power of the Oversight Committee to impose minor measures is constitutionally valid.
- ◆ The Bill does not mention whether a judge has the right to appeal to the Supreme Court against an order of removal issued by the President after Parliament finds him guilty of 'misbehaviour'.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Constitution provides that judges of the High Courts and Supreme Court can be removed only by Parliament on the basis of a motion in either the Lok Sabha or the Rajya Sabha.² The existing procedure for investigation into allegations of misbehaviour or incapacity of Supreme Court and High Court judges is specified in the Judges (Inquiry) Act, 1968. Currently two cases are under investigation: Justice Soumitra Sen of the Calcutta High Court, and Justice Dinakaran of the Sikkim High Court (earlier in the Karnataka High Court). Before this the only case under this process was that of Justice Ramaswamy, but Parliament did not pass the motion to remove him.

In recent years, a number of allegations of corruption against members of the higher judiciary have been made.³ In 1997, the Supreme Court adopted resolutions on (a) Restatement of Values of Judicial Life, and (b) In-house procedure within the judiciary.⁴ A concept paper on a National Judicial Commission was prepared by the National Advisory Council in 2005.⁵ The Judges (Inquiry) Bill, 2005 was drafted by the government and examined by the Law Commission. The revised Judges (Inquiry) Bill, 2006 incorporated almost all the Law Commission's recommendations, and sought to establish a National Judicial Council (NJC). That Bill has however lapsed now.

Key Features

The 2010 Bill replaces the Judges (Inquiry) Act, 1968. It seeks to: (a) create enforceable standards for the conduct of judges of High Courts and the Supreme Court, (b) change the existing mechanism for investigation into allegations of misbehaviour or incapacity of judges of High Courts and the Supreme Court, (c) change the process of removal of judges, (d) enable minor disciplinary measures to be taken against judges, and (e) require the declaration of assets of judges.

Judicial Standards

- The Bill requires judges to follow certain standards of conduct. Complaints against judges can be made on grounds of non-compliance with these standards or certain activities such as corruption, wilful abuse of power or persistent failure to perform duties.
- Some activities prohibited under the Bill are: (a) close association with individual members of the Bar who practise in the same court, (b) allowing family members who are members of the Bar to use the judge's residence for professional work, (c) hearing or deciding matters in which a member of the judge's family or relative or friend is concerned, (d) entering into public debate on political matters or matters which the judge is likely to decide, and (e) engaging in trade or business and speculation in securities.

Investigation Authorities

The Bill establishes three bodies to investigate complaints against judges: the National Judicial Oversight Committee, the Complaints Scrutiny Panel and allows for the constitution of an investigation committee.

- National Judicial Oversight Committee: will consist of a retired Chief Justice of India as the Chairperson, a judge of the Supreme Court, a Chief Justice of the High Court, the Attorney General for India, and an eminent person appointed by the President. The Oversight Committee shall have supervisory powers regarding investigation into complaints against judges, and also the power to impose minor measures.
- Scrutiny Panel: will be constituted in the Supreme Court and every High Court. It shall consist of a former Chief Justice and two sitting judges of that court. The Panel shall conduct an initial investigation into the merits of a complaint made against a judge. It shall also have the power to report frivolous or vexatious complaints. Persons making frivolous or vexatious complaints can be penalised by rigorous imprisonment of up to five years and fine of up to five lakh rupees.
- Investigation Committee: will be set up by Oversight Committee to enquire into complaints. The investigation committee will be set up if the Scrutiny Panel recommends that an inquiry should be carried out to investigate a complaint. The Bill does not specify the qualifications of members of the investigation committee, but leaves this to the discretion of the Oversight Committee.

Complaint and Reference Procedures

The Bill changes the complaint procedure existing in the Judges (Inquiry) Act, 1968. Currently, the removal process may only be initiated by a motion in Parliament. The Bill adds a process to permit any person to file a complaint. Any frivolous or vexatious complaint, if proved, carries a punishment. The proposed changes are given in Table 1. Also see Figure 1 on page 6.

Table 1: Complaint procedure and authorities under the Bill and the Judges (Inquiry) Act, 1968

Topic	Judges (Inquiry) Act, 1968	Judicial Standards and Accountability Bill, 2010
Persons allowed to file complaints	Members of Parliament (motion presented in either House of Parliament).	Members of Parliament or any other person.
Person to whom complaint has to be made	Speaker of the Lok Sabha or the Chairman of the Rajya Sabha.	Speaker/ Chairman (by Members of Parliament) National Judicial Oversight Committee (by persons other than Members of Parliament).
Subsequent procedure	<ul style="list-style-type: none"> ▪ The Speaker/ Chairman may set up a three member committee for investigation. ▪ The Committee will consist of (a) one judge from the Supreme Court and one from among the Chief Justices of High Courts, and (b) a distinguished jurist. ▪ The Committee shall prepare a report after concluding its investigation. The report shall be laid before both the Lok Sabha and the Rajya Sabha. ▪ If the report finds that the charges against the judge are not proved, no further action will be taken. ▪ If the charges framed are proved, the motion against the judge will be taken up for consideration. ▪ If the motion is adopted by both houses of Parliament by two-thirds majority, the misbehaviour or incapacity of the judge is deemed to be proved. 	<ul style="list-style-type: none"> ▪ If the complaint is made by Parliament, the Speaker/ Chairman will refer the matter to the Oversight Committee who will constitute an investigation committee. In other cases, the Oversight Committee refers the matter to the Scrutiny Panel within three months. ▪ The Scrutiny Panel shall report to the Oversight Committee on whether there are sufficient grounds for proceeding against the judge. Report to be submitted in three months, may be extended by three months. ▪ If the Scrutiny Panel reports that there are sufficient grounds for proceeding against the judge, the Oversight Committee shall set up an investigation committee to look into the complaint (Scrutiny Panel will not be involved if the matter is referred through Parliament). Inquiry has to be completed within six months. The investigation committee shall report its findings to the Oversight Committee. ▪ If the Oversight Committee is satisfied that the charges have been proved, the Committee can (a) issue advisories or warnings, or (b) request the judge to resign voluntarily. ▪ If the judge does not resign voluntarily, the Committee shall advise the President to proceed with the removal of the judge, and the President shall refer the matter to Parliament. ▪ The judge may be removed if each House adopts the motion with two-thirds majority.

Sources: Judicial Standards and Accountability Bill, 2010; Judges (Inquiry) Act, 1968; PRS.

Confidentiality and Exemption from RTI

- The Bill prohibits participants in investigations against a Judge from revealing any information regarding the investigation or the complaint without the written consent or direction of the Oversight Committee. The Bill imposes penalties on those violating the confidentiality provisions. Anyone violating these provisions may be imprisoned for up to one month, and may also be fined.
- The Bill exempts documents and records of proceedings related to a complaint from the purview of the Right to Information Act, 2005. The reports of the investigation committee and the order of the Oversight Committee shall be made public.
- Proceedings of the investigation committee will not be open to the public.

Disclosure of Assets and Liabilities

- Judges will be required to declare their assets and liabilities, and also that of their spouse and dependent children. Such declaration has to take place within 30 days of the judge taking his oath to enter his office. In addition, every judge will have to file an annual report of his assets and liabilities. The assets and liabilities of the judge will be displayed on the website of the court to which he belongs.

PART B: KEY ISSUES AND ANALYSIS

There are four main issues with regard to the Bill: (i) the composition of the bodies established to judge judges; (ii) whether provisions on confidentiality and penalties for frivolous and vexatious complaints deter persons from complaining against judges; (iii) whether minor measures can be imposed by a body comprising of non-judicial members, and (iv) whether judges should be able to appeal against orders removing them.

Judging the Judges

Clauses
11, 18, 22

Composition of authority tasked to remove judges

The key issue is to find a balance between holding judges accountable and maintaining the independence of the judiciary. The Standing Committee on Personnel, Public Grievances, Law and Justice⁶, and the Law Commission⁷ have examined these issues in light of the Judges (Inquiry) Bill, 2005 and 2006. The composition of the bodies established to judge the judges needs to reflect this balance.

The Judges (Inquiry) Bill, 2006 proposed a National Judicial Commission only of judges. The Law Commission report agreed with the composition of the Commission. The Standing Committee proposed that the Commission should be broad-based to represent members from the executive, legislature, and the Bar. They argued that if there was a problem regarding non-judicial members, an alternative mechanism should be set up. The alternative would be to have a broad-based committee to conduct preliminary investigations. Such an Empowered Committee should consist of members from the judiciary, executive, legislature and the Bar.

The Oversight Committee in the Bill differs from the recommendations of the Standing Committee. It now consists of three judicial members and two non-judicial members. The two non-judicial members are the Attorney General (appointed by the executive), and an eminent person to be appointed by the President (executive's nominee). There is no member of the legislature in any of the authorities proposed in the Bill.

Table 2 compares the composition of suggested judicial oversight bodies in India.

Table 2: Composition of Suggested Judicial Oversight Bodies in India

	Judges (Inquiry) Bill, 2006 and Law Commission	Standing Committee	2010 Bill
Composition	<ul style="list-style-type: none"> ▪ Chief Justice of India; ▪ Two senior-most judges of the Supreme Court; ▪ Two Chief Justices of High Courts. 	<p>Recommended a broad-based committee consisting of members from the executive, legislature, and the bar; or,</p> <p>The establishment of a broad-based empowered committee to conduct initial screening of complaints.</p>	<ul style="list-style-type: none"> ▪ The National Oversight Committee has members from the judiciary and the executive; ▪ The Scrutiny Panel doing initial screenings is composed entirely of judges; ▪ The composition of the investigation committee is not known.

Sources: Judges (Inquiry) Bill, 2006; Standing Committee on Personnel, Public Grievances, Law and Justice; PRS.

The basic features of some judicial oversight bodies in other countries are summarised in Table 3.

Table 3: Judicial Oversight Bodies in Some Countries

	Investigation Body	Qualifications	Authority to remove judges
England & Wales	Judicial Appointments Commission & Ombudsman	Lay person with no legal experience	Legislature
Canada	Two oversight commission members and appointee of Justice Minister	Judges	Legislature
United States	Judicial Council	Judges	Judiciary & Legislature
France	Oversight commission	Judges, prosecutors, & three who are neither judges nor of the legislature	Oversight commission
Germany	Federal Constitutional Court	Judges	Federal Constitutional Court
South Africa	Oversight Commission	Ministers, legislators, lawyers, law professors, and judges	Executive, after a resolution by two-thirds of the legislature

Sources: 195th Law Commission Report; US Court of Appeals; PRS.

Clause 12 Composition of Scrutiny Panel

The Bill provides that judges from the same High Court shall first scrutinise whether a complaint against a judge needs to be investigated. It does not provide a review mechanism by the Oversight Committee if the Scrutiny Panel decides that there is no merit in the complaint.

In 1997, the Supreme Court adopted a different in-house procedure for inquiring into complaints of misbehaviour against judges. It stated that the inquiry committee would consist of two Chief Justices of High Courts other than the High Court to which the judge belongs, and one other High Court judge. This procedure ensured that judges of the same High Court would not sit in inquiry against a judge. Table 4 compares the current in-house procedure and the procedure proposed in the Bill:

Table 4: Composition of committees under the Supreme Court’s 1997 Resolution and the Bill.

	Supreme Court’s in-house procedure	Bill
Judge of the High Court	Two Chief Justices of High Courts other than the High Court to which the judge belongs, and one other High Court judge.	Scrutiny Panel. Headed by a former Chief Justice of that High Court and two other sitting judges of that court.
Judge of the Supreme Court judge	Three judges of the Supreme Court.	Same as above.
Role	Investigate and recommend penalties such as withdrawal of work, public censure, warnings, etc.	Report to Oversight Committee whether further investigation is necessary.

Sources: 195th Report of the Law Commission of India; Judicial Standards and Accountability Bill, 2010; PRS.

The report of the Standing Committee on the Judges (Inquiry) Bill, 2006, had proposed a screening body with wider representation. It suggested that the body have representatives of the judiciary, legislature and the Bar. The major reasons it had given for the proposing this ‘Empowered Committee’ were: (a) it would be an impartial, wider representative body, (b) it would provide for the screening of complaints at an initial level; and (c) wider representation would ensure credibility and transparency.

Clauses
16, 53

Penalties for frivolous complaints

The Bill requires all complaints to be kept confidential. Any breach of confidentiality carries a penalty. In addition, a vexatious or frivolous complaint, if made in public, may also be penalised under the Contempt of Courts Act, 1971. These two safeguards protect a judge from defamation. However, judges cannot be defamed if complaints are kept confidential. Therefore, the need for an additional safeguard against frivolous complaints may be questionable.

The quantum of penalty is significantly higher than for other similar offences. The Contempt of Courts Act, 1971 provides for simple imprisonment for up to six months and a fine of up to Rs 2,000.⁸ The Judges (Inquiry) Bill, 2006 (and the Law Commission report) had proposed a maximum penalty of simple imprisonment of up to one year, and fine of up to Rs 25,000. The Bill imposes a penalty of imprisonment of up to five years, and fine of up to five lakh rupees.

Clause 34

Constitutional validity of minor measures

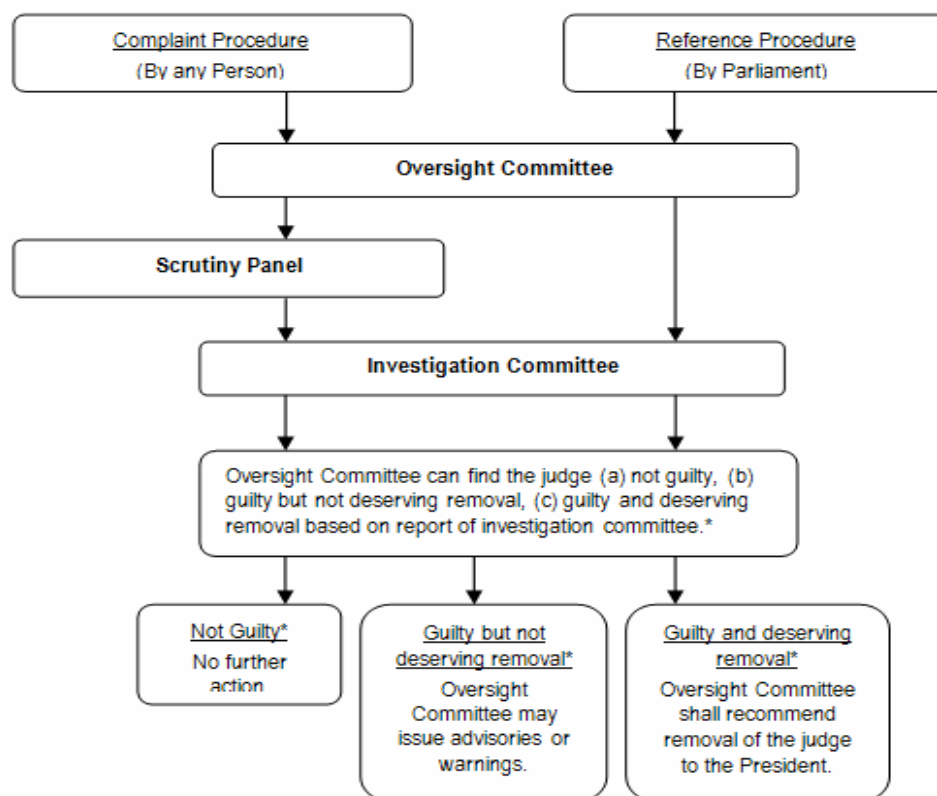
The Bill allows for minor measures to be imposed by the Oversight Committee in some cases. These are: (a) issuing advisories, or (b) warnings. The Supreme Court⁹ and the Law Commission upheld the constitutionality of minor measures in the context of oversight bodies composed entirely of the judiciary. The Law Commission viewed the imposition of minor measures as an in-house process. This would not be an encroachment by the executive or the legislature since such power is vested in ‘peers’ within the judiciary.”¹⁰

The Oversight Committee proposed in the Bill consists of members from the executive as well as the judiciary. It is therefore not clear whether this can be viewed as an in-house process and whether it violates the constitutional safeguards of the independence of the judiciary.

Right of a judge to appeal to Supreme Court against removal

In a 1993 judgement, the Supreme Court has held that a judge can seek ‘judicial review’ against an order of the President removing him.¹¹ The Bill makes no mention of whether a judge who has been removed has a right to appeal to the Supreme Court. Therefore, based on this judgement, a judge will to have the right to appeal to the Supreme Court to review the order of removal passed by Parliament². The Standing Committee had stated that there should not be any provision for appeal as the finality of a Presidential order should not be challenged.

Figure 1: Procedure of investigation into a complaint against a High Court or Supreme Court judge.



*Under the reference procedure, the final report of the Oversight Committee is submitted to the Speaker/ Chairman irrespective of the findings of the investigation committee.

Notes

1. This Brief has been written on the basis of the Judicial Standards and Accountability Bill, 2010 introduced in the Lok Sabha on December 1, 2010.
2. Article 124 of the Constitution of India.
3. CBI gets Chief Justice nod to probe Nirmal Yadav Case, Hindustan Times, <http://www.hindustantimes.com/CBI-gets-chief-justice-nod-to-probe-Nirmal-Yadav-case/Article1-594984.aspx>; Justice Soumitra Sen to be impeached for misusing public funds, Times of India, <http://timesofindia.indiatimes.com/india/Justice-Soumitra-Sen-to-be-impeached-for-misusing-public-funds/articleshow/6900744.cms>.
4. Law Commission of India 195th Report on the Judges (Inquiry) Bill, 2005. January 2006.
5. "A National Judicial Commission: Judicial Appointments and Oversight", Concept Papers, National Advisory Council, http://nac.nic.in/concept%20papers/Judicial_Commission.pdf.
6. Twenty First Report on the Judges (Inquiry) Bill, 2006. Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, 17th August 2007.
7. Law Commission of India 195th Report on The Judges (Inquiry) Bill, 2005. January 2006.
8. Section 12 of the Contempt of Courts Act, 1971.
9. C. Ravichandran Iyer v. Justice A.M.Bhattacharjee, 1995 (5) SCC 457.
10. Chapter 20 of the 195th Report of the Law Commission of India.
11. Sarojini Ramaswamy v. Union of India (1992) 4 SCC 506 (Para 78).

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